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OFFICE OF PETITIONS

In re Reissue Application of :
Jan Hendrik Mensen : DECISION ON PETITION
Reissue Application No. 09/374,598 : UNDER 37 CFR 1.183
Received: August 13, 1999 :
Title: WEB MEMBER FOR CONCRETE :
FORM WALLS :
Attorney Docket No. 026988-000220US:

This is in response to the "PETITION UNDER 37 CFR 1.183 TO WAIVE 37 CFR 1.172 TO ACCEPT THE USPTO-REQUIRED SUPPLEMENTAL REISSUE DECLARATION IN THE ABSENCE OF THE NAMED INVENTOR'S SIGNATURE," filed April 24, 2008. Petitioner in effect requests suspension or waiver of the regulations that require all of the inventors to sign a supplemental declaration in a reissue application. This decision is made in light of the supplement to petition filed June 27, 2008.

U.S. Patent No. 5,657,600 (the '600 patent) issued to Jan Mensen on August 19, 1997. A broadening reissue application (the present application) was filed for the '600 patent on August 13, 1999, and it was assigned application number 09/374,598.

The petition is GRANTED.

On January 18, 2000, applicants filed the original reissue declaration executed by inventor Mensen on December 23, 1999, and including his citizenship, residence and post office address. Petitioner states that the examiner required in May 2007, a supplemental reissue declaration so as to fulfill the

requirements of 37 CFR 1.175. A review of the record does not reveal any May 2007 Office action.

Nonetheless, on April 24, 2008, petitioner filed the instant petition, requesting acceptance of a supplemental reissue declaration by assignee without the signature of sole inventor Mensen and a statement under 37 CFR 3.73(b). However, the supplemental reissue declaration submitted with the petition was not executed. On June 27, 2008, Petitioner filed a supplemental reissue declaration executed by Scott Jaglowitz, as an authorized representative of the rule 47(b) applicant on behalf of non-signing inventor Mensen. The petition also included a new 3.73(b) statement setting forth that Scott Jaglowitz, as Chief Financial Officer, is authorized to sign on behalf of assignee ARXX Building Products, A Canadian Corporation.

Petitioner requests waiver on the basis that the assignee has diligently undertaken to obtain inventor Mensen's signature on the required declaration, even offering a very generous consideration fee, but to no avail. The petition includes a statement of facts, including documentary evidence of the presentation of the reissue application papers covered by the supplemental reissue declaration to the nonsigning inventor. Further, the petition includes copies of communications between the assignee and the inventor. This evidence supports a conclusion that inventor Mensen refuses, after being presented with the reissue application papers, to execute the supplemental reissue declaration.

The provisions of 35 U.S.C. 251, which are directed to reissue of patents, do not address the signature requirements of a declaration or oath in reissue. As to the reissue regulations, 37 CFR 1.172 requires that a reissue declaration or oath be made (and signed) by the inventors, except as otherwise provided (37 CFR §§ 1.42, 1.43, 1.47), where the scope of the claims of the original patent is being enlarged. In addition, 37 CFR 1.175(b)(1), requires that:

For any error corrected, which is not covered by the oath or declaration submitted under paragraph (a) of this section, applicant must submit a supplemental oath or declaration stating that every such error arose without any deceptive intention on the part of the applicant.
[Emphasis added]

37 CFR 1.175(b)(1), taken in conjunction with 37 CFR 1.172, requires that a supplemental oath or declaration be signed by all of the inventors. This is because all oaths or declarations necessary to fulfill the rule requirements in a reissue application are taken together collectively as a single oath or declaration. See In re Hayes, 53 USPQ2d 1222 (Comm'r Pat. 1999). Thus, each oath and/or declaration must bear the appropriate signatures of the inventors.

In the present instance, the supplemental declaration is not signed by all of the inventors. 37 CFR 1.183 permits, in an extraordinary situation, waiver of a rule which is not a requirement of the statute, where justice requires such waiver, and assignees have requested, via the present petition, a waiver of the requirement that the 37 CFR 1.175(b)(1) supplemental declaration be signed by all of the inventors.

The instant petition is accompanied by an appropriate showing that inventor Mensen is unavailable. A written consent of assignee and a 3.73(b) statement are of record. The showing as to extraordinary circumstances is complete, 37 CFR § 1.183 can be invoked.

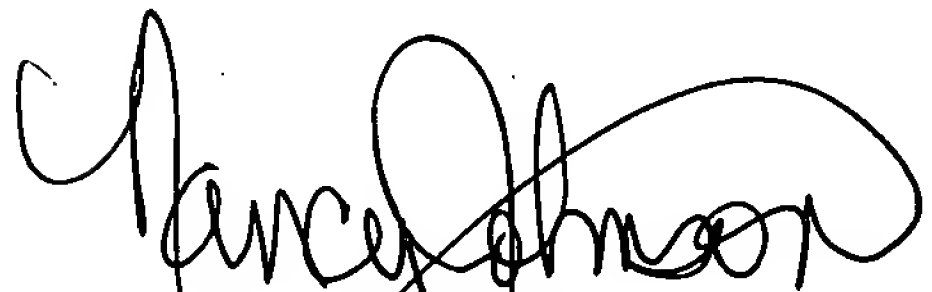
Accordingly, this petition under 37 CFR 1.183 is granted to waive the rules. The provisions of 37 CFR 1.175(b)(1), and 37 CFR 1.172 are hereby waived to the extent that the June 27, 2008 supplemental reissue application declaration signed by the assignee will be accepted as though it was signed by the inventor.

The \$400 petition fee has been charged to Deposit Account No. 50-2929, as authorized.

Pursuant to the Revocation of Power of Attorney and 3.73(b) statement filed October 10, 2007, the practitioners of record and correspondence address of record have been changed to those associated with Customer No. 20350 (Townsend and Townsend). A courtesy copy of this decision is being mailed to the address set forth on the petition. All future correspondence will be mailed to the correspondence address of record until such time as a proper change of correspondence address (and/or power of attorney) are filed.

The application is being forwarded to Technology Center 3637 for further action by the examiner.

Please direct any questions related to this decision to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson". The signature is fluid and cursive, with the first name "Nancy" written in a larger, more prominent script than the last name "Johnson".

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

cc: Abraham HersHKovitz
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